Supreme Court, U.S.
FILED
JUL 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 86-26

In The
Supreme Court of the United States
October Term, 1985

THE UNITED KINGDOM MUTUAL STEAMSHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED,
Petitioner,

vs.

STATE ESTABLISHMENT FOR AGRICULTURAL PRODUCT TRADING,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF RESPONDENT IN RESPONSE TO PETITION OF THE UNITED KINGDOM MUTUAL STEAMSHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED FOR WRIT OF CERTIORARI

David G. Hanlon
Counsel of Record
Shackleford, Farrior, Stallings & Evans, P.A.
Counsel for Petitioner
Post Office Box 3324
Tampa, Florida 33601
(813) 273-5000

and

Machale A. Miller
O'Neil, Eichin & Miller
Suite 2220
1250 Poydras Plaza
New Orleans, Louisiana 70113
(504) 525-3200

COCKLE LAW BRIEF PRINTING CO., (800) 228-8845 (tone) 75
or call collect (402) 342-2831

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
SUMMARY OF ARGUMENT	1
REASON FOR NOT GRANTING THE WRIT	1
CONCLUSION	6
APPENDIX	1a

TABLE OF AUTHORITIES

CASES: Page

American Eastern Development Corp. v. Everglades Marina, Inc., 608 F.2d 123 (5th Cir. 1979) 4

Continental Oil Co. v. Bonanza Corp., 677 F.2d 455 (5th Cir. 1982), 706 F.2d 1365 (5th Cir. rehearing 1983) 2, 4

Cushing v. Maryland Casualty, 198 F.2d 536 (5th Cir. 1952) 3

D. J. McDuffie, Inc. v. Old Reliable Fire Insurance Co., 608 F.2d 145 (5th Cir. 1979), cert. denied, 449 U.S. 830, 101 S.Ct. 97, 66 L.Ed.2d 35 4

Maryland Casualty v. Cushing, 347 U.S. 409, 74 S.Ct. 608, 98 L.Ed. 806 (1954) 3, 5, 6

Quinones v. Coral Rock, Inc., 258 So.2d 485 (Fla. 1972) 2

Shingleton v. Bussey, 223 So.2d 713 (Fla. 1969) 2, 3

Steelmet, Inc. v. Caribe Towing Corp., 779 F.2d 1485 (11th Cir. 1986), modifying on rehearing 747 F.2d 689 (11th Cir. 1984) 2, 3

Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 99 L.Ed. 337, 75 S.Ct. 368 (1955) 4

STATUTES:

46 USC § 181 5

CONSTITUTIONS:

U.S. CONST. art III § 2 4

No. 86-26

In The

Supreme Court of the United States

October Term, 1985

THE UNITED KINGDOM MUTUAL STEAMSHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED,
Petitioner,

vs.

STATE ESTABLISHMENT FOR AGRICULTURAL PRODUCT TRADING,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF RESPONDENT IN RESPONSE TO PETITION OF THE UNITED KINGDOM MUTUAL STEAMSHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

A direct action against a maritime insurer does not interfere with any feature of substantive admiralty law nor with any remedy peculiar to admiralty jurisdiction and it does not adversely affect the uniformity of admiralty.

REASON FOR NOT GRANTING THE WRIT

It isn't forum shopping or uniformity in admiralty that upsets the marine insurers; it's a convenient forum with all of the cards on the table. Reading plaintiff's brief,

page 5, one has to chuckle in admiration at the great ingenuity it took to use a clause from a sentence, "Federal admiralty law provides no general right to sue an insurance company directly . . ."[1], to make it seem like admiralty proscribes state law as a source for deciding whether or not a right of action against the insured and the marine insurer matures at the time of the occurrence rather than after judgment. The full sentence illustrates how petitioner manipulated the meaning:

> Federal admiralty law provides no general right to sue an insurance company directly, *Stuyvesant, supra,* and, looking landwards, Texas law refuses to permit a direct action against an insurance company. [at p. 460]

While Texas refuses to permit a direct action against an insurance company, a reader of that case, looking landwards in Florida, finds a convenient forum where the realities and attending manifested rules of fair play are observed. *Shingleton v. Bussey,* 223 So.2d 713 (Fla. 1969); *Steelmet, Inc. v. Caribe Towing Corp.,* 779 F.2d 1485 (11th Cir. 1986), *modifying on rehearing,* 747 F.2d 689 (11th Cir. 1984) (see Appendix A); and *Quinones v. Coral Rock, Inc.,* 258 So.2d 485 (Fla. 1972). Petitioner argues *Shingleton, supra,* does not embrace a direct action but only per-

---

[1] *Continental Oil Co. v. Bonanza Corp.,* 677 F.2d 455 (5th Cir. 1982), reversed in part on other grounds, 706 F.2d 1365 (5th Cir. rehearing 1983).

mits joinder,[2] therefore, since joinder is procedural and Florida procedure may not override substantive admiralty law, a direct action invades the exclusive field of federal jurisdiction over admiralty and maritime matters. Judge Godbold in *Steelmet, supra,* considered Florida's direct action in the context of whether or not it conflicts with any admiralty principle and found that admiralty law neither permits nor expressly forbids a direct action against an insured and its marine insurer. The court quoted language from *Cushing v. Maryland Casualty,* 198 F.2d 536 (5th Cir. 1952), reversed on other grounds, *sub nom. Maryland Casualty v. Cushing,* 347 U.S. 409, 74 S.Ct. 608, 98 L.Ed. 806 (1954), as the clearest statement of the absence of any effect on admiralty:

> There is nothing in it [direct action] which undertakes to change the substantive admiralty law, nor does it undertake to deal with a remedy in courts of admiralty. The statute provides only an additional and cumulative remedy at law in the enforcement of obligations of indemnity voluntarily and lawfully assumed by the insurer. Thus the statute does not conflict with any feature of substantive admiralty law, nor with any remedy peculiar to admiralty jurisdiction. [at p. 1491]

To make matters worse, the point petitioner attempts to make in its brief, page 5:

---

[2] Petitioner's interpretation of the Florida Supreme Court's decision in *Shingleton* is frivolous since there is no basis for joinder without an underlying substantive cause of action. It is further refuted by the fact that when the legislature modified the rule as to certain incidents occurring subsequent to October 1, 1982, it did so by proclaiming that the substantive cause of action against the insurer in such cases did not accrue until judgment had been obtained against the insured.

> There is no case law supporting the proposition that a Federal court hearing a case on the basis of admiralty and maritime jurisdiction should adopt state procedure.

ends up being refuted by the very authority upon which petitioner relies, i.e., *Continental Oil Company v. Bonanza Corp.*, 677 F.2d 455 (5th Cir. 1982), reversed in part on other grounds, 706 F.2d 1365 (5th Cir. Rehearing 1983). The Court rejected petitioner's position and said:

> When admiralty law speaks to a question, state law cannot override it, *see D. J. McDuffie, Inc. v. Old Reliable Fire Insurance Co.*, 608 F.2d 145, 147 n.1 (5th Cir. 1979), *cert. denied*, 449 U.S. 830, 101 S.Ct. 97, 66 L.Ed.2d 35 (1980). But when admiralty law is silent, and there is no need for uniformity, state law must be heard, *see American Eastern Development Corp. v. Everglades Marina, Inc.*, 608 F.2d 123 (5th Cir. 1979). [p. 461, n.7]

Simply stated, there is nothing wrong with allowing an injured party a direct, non-circuitous, convenient means of satisfying a claim judicially determined to be owing by the insured if the claim is within the coverage afforded by the policy.

Petitioner cites *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 99 L.Ed. 337, 75 S.Ct. 368 (1955), as authority for the proposition that a direct action against a marine insurer conflicts with the uniformity requirement in admiralty established by U.S. CONST. art. III, § 2. Uniformity, as interpreted by that case, does not extend its reach to every term of every maritime contract:

> But it does not follow, as the courts below seemed to think, that every term in every maritime contract can only be controlled by some federally defined admir-

> alty rule. In the field of maritime contracts as in that of maritime torts, the National Government has left much regulatory power in the States. As later discussed in more detail, this state regulatory power exercised with federal consent or acquiescence, has always been particularly broad in relation to insurance companies and the contracts they make.

and the Supreme Court concluded:

> Under our present system of diverse state regulations, which is as old as the Union, the insurance business has become one of the great enterprises of the Nation. Congress has been exceedingly cautious about disturbing this system, even as to marine insurance where congressional power is undoubted. We, like Congress, leave the regulation of marine insurance where it has been—with the States.

The regulatory power of the states was confirmed by the Supreme Court in *Maryland Casualty Co. v. Cushing, supra,* where it answered the question: Does Louisiana's direct action against a marine insurer interfere with the federal limitation proceeding? The Supreme Court's answer was, "No!" and Justices Frankfurter, Reed, Jackson and Burton joined Justice Clark, who saw no necessity for invalidating Louisiana's law by dismissing the direct actions, remanded the case until after the completion of the limitation proceeding. In other words, the court continued the direct actions against the marine insurers until after completion of the limitation proceeding. In that way the damaged claimants were permitted to pursue their actions against the marine insurers so that the shipowner would receive the protection of the Limitation of Vessel Owner's Liability statute, 46 USC §181, et seq., and the injured

seamen and the families of the deceased seamen would receive the protection of the marine insurance.

The *Cushing* case, *supra,* has been cited in a long line of circuit court cases which have preserved the state's direct action against marine insurers without conflicting with the federal provision for a concursus of claims and the limitation of the shipowner's liability. State Establishment's direct action against The United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited conflicts with no aspect of the Limitation of Vessel Owner's Liability statute, 46 USC § 181, et seq., because no federal limitation proceeding is pending in any court.

CONCLUSION

Reject U.K. Club's petition for a writ of certiorari.

Respectfully submitted,

David G. Hanlon
Counsel of Record
Shackleford, Farrior, Stallings
& Evans, P.A.
Counsel for Petitioner
Post Office Box 3324
Tampa, Florida 33601
(813) 273-5000

and

Machale A. Miller
O'Neil, Eichin & Miller
Suite 2220
1250 Poydras Plaza
New Orleans, Louisiana 70113
(504) 525-3200

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 84-3041

STATE ESTABLISHMENT FOR AGRICULTURAL PRODUCT TRADING,

Plaintiff-Appellant,

versus

M/V WESERMUNDE, etc., et al.,

Defendants-Appellees.

No. 84-3161

GREAT AMERICAN INSURANCE COMPANIES,

Plaintiff-Appellant,

versus

UITERWYK LINES LTD., et al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida

(February 25, 1986)

Before VANCE and ANDERSON, Circuit Judges, and HENLEY*, Senior Circuit Judge.

---

*Honorable J. Smith Henley, Senior U. S. Circuit Judge for the Eighth Circuit, sitting by designation.

PER CURIAM:

The sole issue presented in these two cases is whether a plaintiff may maintain a direct action against a maritime insurer for damage to cargo. In both cases, the district court concluded that such an action may not be maintained and hence dismissed the plaintiffs' direct claims.

In *Steelmet, Inc. v. Caribe Towing Corp.*, — F.2d —, slip op.1584, 1588-90 (11th Cir. Jan. 13, 1986), *modifying on reh'g* 747 F.2d 689, 696 (11th Cir. 1984), this court concluded that Florida law permits direct actions against maritime insurers for claims arising out of events occurring before October 1, 1982, and that state law on this point is not preempted by the federal law of admiralty. Because the causes of action in both cases now before us arose prior to October 1982 and are governed by Florida law, both cases are controlled by our holding in *Steelmet*.

The judgments are REVERSED and the cases are REMANDED to the district court.